

AMENDED IN SENATE JULY 16, 2003

AMENDED IN SENATE JULY 3, 2003

AMENDED IN ASSEMBLY MAY 19, 2003

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1601

Introduced by Assembly Member Frommer

February 21, 2003

An act to amend Sections 19164, 19166, 19173, 19177, 19179, 19715, and 21028 of, to add Section 18407 to, and to add Chapter 9.5 (commencing with Section 19770) to Part 10.2 of, the Revenue and Taxation Code, relating to taxation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1601, as amended, Frommer. Administration of taxes: tax shelters: penalties.

Existing law imposes various taxes and fees, and certain penalties on late payments of those taxes and fees. Existing law provides specified conformity to federal income tax laws with respect to penalties imposed in connection with tax avoidance and abusive tax shelters.

This bill would, in modified conformity with federal income tax laws, increase the penalties imposed with respect to tax avoidance and abusive tax shelters, as provided.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 18407 is added to the Revenue and Taxation Code, to read:

18407. Section 6011 of the Internal Revenue Code, relating to general requirement of return, statement, or list, applies, except as otherwise provided.

(a) Section 6011(a) of the Internal Revenue Code, relating to general rule, is modified as follows:

(1) The phrase “Any person liable for any tax imposed by the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the Corporation Tax Law (Part 11 (commencing with Section 23001)) or this part,” is substituted for the phrase “When required by regulations prescribed by the Secretary any person made liable for any tax imposed by this title”.

(2) “Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board” is substituted for “Secretary.”

(3) To additionally provide that “reportable transaction” (as defined in paragraph (1) of subdivision (c) of Section 19772) includes any transaction of a type that the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or the Franchise Tax Board determines as having a potential for tax avoidance or evasion, including deductions, basis, credits, entity classification, dividend elimination, or omission of income, and shall be reported on the return or statement required to be made.

(4) To additionally provide that “listed transaction” (as defined in paragraph (2) of subdivision (c) of Section 19772) includes any transaction that is the same as, or substantially similar to, a transaction specifically identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board, as a tax avoidance transaction, including deductions, basis, credits, entity classification, dividend elimination, or omission of income and shall be reported on the return or statement required to be made.

(A) The Franchise Tax Board shall identify and publish “listed transactions” (whether identified by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal

1 income tax purposes or by the Franchise Tax Board) through the
2 use of Franchise Tax Board Notices or other published positions.
3 In addition, the “listed transactions” identified and published
4 pursuant to the preceding sentence shall be published on the Web
5 site of the Franchise Tax Board.

6 (B) The Franchise Tax Board shall conduct a public outreach
7 program to make taxpayers aware of the new and increased
8 penalties associated with the use of tax avoidance transactions,
9 including deductions, basis, credits, entity classification, dividend
10 elimination, or omission of income.

11 (5) Chapter 3.5 (commencing with Section 11340) of Part 1 of
12 Division 3 of Title 2 of the Government Code does not apply to any
13 standard, criterion, procedure, determination, rule, notice, or
14 guideline established or issued by the Franchise Tax Board
15 pursuant to paragraph (3) or (4).

16 (b) Section 6011(b) of the Internal Revenue Code, relating to
17 identification of taxpayer, does not apply and, in lieu thereof,
18 Section 18408 applies.

19 (c) Section 6011(c) of the Internal Revenue Code, relating to
20 returns, etc., of DISCS and former DISCS and FSC’s and former
21 FSC’s, does not apply.

22 (d) Section 6011(d) of the Internal Revenue Code, relating to
23 authority to require information concerning Section 912
24 allowances, does not apply.

25 (e) Section 6011(e) of the Internal Revenue Code, relating to
26 regulations requiring returns on magnetic media, etc., shall take
27 into account Section 18408 and shall also include the
28 modifications made to Section 6011(e) of the Internal Revenue
29 Code by Section 18408.

30 (f) Section 6011(f)(2) of the Internal Revenue Code, relating to
31 incentives, does not apply.

32 SEC. 2. Section 19164 of the Revenue and Taxation Code is
33 amended to read:

34 19164. (a) (1) An accuracy-related penalty shall be imposed
35 under this part and shall be determined in accordance with Section
36 6662 of the Internal Revenue Code, relating to imposition of
37 accuracy-related penalty, except as otherwise provided.

38 (2) With respect to corporations, this subdivision applies to all
39 of the following:

40 (A) All taxable years beginning on or after January 1, 1990.

1 (B) Any other taxable year for which an assessment is made
2 after July 16, 1991.

3 (C) For purposes of this section, references in Section 6662(e)
4 of the Internal Revenue Code and the regulations thereunder,
5 relating to treatment of an affiliated group that files a consolidated
6 federal return, are modified to apply to those entities required to
7 be included in a combined report under Section 25101 or 25110.
8 For these purposes, entities included in a combined report pursuant
9 to paragraph (4) or (6) of subdivision (a) of Section 25110 shall be
10 considered only to the extent required to be included in the
11 combined report.

12 (3) Section 6662(d)(1)(B) of the Internal Revenue Code is
13 modified to provide that in the case of a corporation, other than an
14 “S” corporation, *which has been contacted by the Franchise Tax*
15 *Board regarding the use of a potentially abusive tax shelter (within*
16 *the meaning of Section 19777),* there is a substantial
17 understatement of tax for any taxable year if the amount of the
18 understatement for the taxable year exceeds the lesser of:

19 (A) Ten percent of the tax required to be shown on the return
20 for the taxable year (or, if greater, two thousand five hundred
21 dollars (\$2,500)).

22 (B) Five million dollars (\$5,000,000).

23 (4) Section 6662(d)(2)(A) of the Internal Revenue Code is
24 modified to provide that the excess determined under Section
25 6662(d)(2)(A) of the Internal Revenue Code shall be determined
26 without regard to items to which Section 19773 applies and
27 without regard to items with respect to which a penalty is imposed
28 by Section 19774.

29 (5) Section 6662(d)(2)(B)(i) of the Internal Revenue Code is
30 modified to substitute the phrase “the tax treatment of any item by
31 the taxpayer if the taxpayer had reasonable belief that the tax
32 treatment was more likely than not the proper treatment” for the
33 phrase “the tax treatment of any item by the taxpayer if there is or
34 was substantial authority for such treatment” contained therein.

35 (b) (1) For purposes of Section 6662(d) of the Internal
36 Revenue Code, Section 6664 of the Internal Revenue Code (as
37 modified by subdivision (d)), Section 6694(a)(1) of the Internal
38 Revenue Code, and this part, the Franchise Tax Board may
39 prescribe a list of positions for which the Franchise Tax Board
40 believes there is no substantial authority or there is no reasonable

1 belief that the tax treatment is more likely than not the proper tax
2 treatment. That list, and any revisions thereof, shall be published
3 through the use of Franchise Tax Board Notices or other published
4 positions. In addition, the “listed transactions” identified and
5 published pursuant to the preceding sentence shall be published on
6 the Web site of the Franchise Tax Board.

7 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
8 Division 3 of Title 2 of the Government Code does not apply to any
9 standard, criterion, procedure, determination, rule, notice, or
10 guideline established or issued by the Franchise Tax Board
11 pursuant to paragraph (1).

12 (c) A fraud penalty shall be imposed under this part and shall
13 be determined in accordance with Section 6663 of the Internal
14 Revenue Code, relating to imposition of fraud penalty, except as
15 otherwise provided.

16 (d) Section 6664 of the Internal Revenue Code, relating to
17 definitions and special rules, applies, except as otherwise
18 provided.

19 (1) Section 6664 of the Internal Revenue Code is modified to
20 provide that no penalty shall be imposed under Section 19773 with
21 respect to any portion of a reportable transaction understatement
22 if it is shown that there was a reasonable cause for that portion and
23 that the taxpayer acted in good faith with respect to that portion.

24 (2) Paragraph (1) does not apply to any reportable transaction
25 understatement unless all of the following requirements are met:

26 (A) (i) The relevant facts affecting the tax treatment of the
27 item are adequately disclosed in accordance with the regulations
28 prescribed under Section 6011 of the Internal Revenue Code, as
29 modified by Section 18407.

30 (ii) A taxpayer failing to adequately disclose in accordance
31 with Section 6011 of the Internal Revenue Code, as modified by
32 Section 18407, shall be treated as meeting the requirements of this
33 subparagraph if the penalty for that failure was rescinded under
34 subdivision (d) of Section 19772.

35 (B) There is or was substantial authority for that treatment.

36 (C) The taxpayer reasonably believed that that treatment was
37 more likely than not the proper treatment.

38 (3) For purposes of subparagraph (C) of paragraph (2), all of
39 the following apply:

1 (A) A taxpayer shall be treated as having a reasonable belief
2 with respect to the tax treatment of an item only if that belief meets
3 both of the following requirements:

4 (i) Is based on the facts and law that exist at the time the return
5 of tax that includes that tax treatment is filed.

6 (ii) Relates solely to the taxpayer's chances of success on the
7 merits of that treatment and does not take into account the
8 possibility that the return will not be audited, that the treatment
9 will not be raised on audit, or that the treatment will be resolved
10 through settlement if it is raised.

11 (B) (i) An opinion of a tax advisor may not be relied upon to
12 establish the reasonable belief of a taxpayer if either of the
13 following conditions are met:

14 (I) The tax advisor is described in clause (ii).

15 (II) The opinion is described in clause (iii).

16 (ii) A tax advisor is described in this clause if the tax advisor
17 meets any of the following conditions:

18 (I) Is a material advisor (within the meaning of paragraph (1)
19 of subdivision (b) of Section 19775) who participates in the
20 organization, management, promotion, or sale of the transaction
21 or who is related (within the meaning of Sections 267(b) or
22 707(b)(1) of the Internal Revenue Code) to any person who so
23 participates.

24 (II) Is compensated directly or indirectly by a material advisor
25 with respect to the transaction.

26 (III) Has a fee arrangement with respect to the transaction that
27 is contingent on all or part of the intended tax benefits from the
28 transaction being sustained.

29 (IV) As determined under regulations prescribed by either the
30 Secretary of the Treasury for federal income tax purposes or the
31 Franchise Tax Board, has a continuing financial interest with
32 respect to the transaction.

33 (iii) For purposes of clause (i), an opinion is disqualified if the
34 opinion meets any of the following conditions:

35 (I) Is based on unreasonable factual or legal assumptions
36 (including assumptions as to future events).

37 (II) Unreasonably relies on representations, statements,
38 findings, or agreements of the taxpayer or any other person.

39 (III) Does not identify and consider all relevant facts.

1 (IV) Fails to meet any other requirement as either the Secretary
2 of the Treasury for federal income tax purposes or the Franchise
3 Tax Board may by forms and instructions prescribe.

4 (e) Section 6665 of the Internal Revenue Code, relating to
5 applicable rules, applies, except as otherwise provided.

6 (f) Section 461(i)(3)(C) of the Internal Revenue Code is
7 modified by substituting the phrase “Section 1274(b)(3)(B) of the
8 Internal Revenue Code, as modified by subdivision (g) of Section
9 19164” in lieu of “section 6662(d)(2)(C)(iii).”

10 (g) Section 1274(b)(3)(B)(i) of the Internal Revenue Code is
11 modified to provide that, for purposes of Section 1274(b)(3)(B) of
12 the Internal Revenue Code, the term “tax shelter” means (1) a
13 partnership or other entity, (2) any investment plan or
14 arrangement, or (3) any other plan or arrangement, if a significant
15 purpose of the partnership, entity, plan, or arrangement is the
16 avoidance or evasion of federal income tax or the tax imposed
17 under the Personal Income Tax Law (Part 10 (commencing with
18 Section 17001)) or Corporation Tax Law (Part 11 (commencing
19 with Section 23001)).

20 SEC. 3. Section 19166 of the Revenue and Taxation Code is
21 amended to read:

22 19166. A penalty shall be imposed for understatement of any
23 taxpayer’s liability by a tax return preparer. The penalty shall be
24 determined in accordance with Section 6694 of the Internal
25 Revenue Code, except as otherwise provided.

26 (a) (1) Section 6694(a) of the Internal Revenue Code is
27 modified to substitute “\$1,000” in lieu of “\$250.”

28 (2) Section 6694(a)(1) of the Internal Revenue Code is
29 modified to substitute the phrase “reasonable belief that the tax
30 treatment in that position was more likely than not the proper
31 treatment” in lieu of the phrase “realistic possibility of being
32 sustained on its merits.”

33 (3) Section 6694(a)(3) of the Internal Revenue Code is
34 modified to substitute the phrase “or there was no reasonable basis
35 for the tax treatment of that position” in lieu of the phrase “or was
36 frivolous.”

37 (b) Section 6694(b) of the Internal Revenue Code is modified
38 to substitute “\$5,000” in lieu of “\$1,000.”

39 (c) Section 6694(c) of the Internal Revenue Code does not
40 apply and, in lieu thereof, the following apply:

1 (1) If, within 30 days after the day on which notice and demand
2 of any penalty under Section 6694(a) or 6694(b) of the Internal
3 Revenue Code is made against any person who is an income tax
4 return preparer, that person pays an amount which is not less than
5 15 percent of the amount of that penalty and files a claim for refund
6 of the amount so paid, no levy or proceeding in court for the
7 collection of the remainder of that penalty shall be made, begun,
8 or prosecuted until the final resolution of a proceeding begun as
9 provided in paragraph (2). Notwithstanding Section 19381, the
10 beginning of that proceeding or levy during the time that
11 prohibition is in force may be enjoined in a proceeding in the
12 superior court.

13 (2) If, within 30 days after the day on which a claim for refund
14 of any partial payment of any penalty under Section 6694(a) or
15 6694(b) of the Internal Revenue Code is denied (or, if earlier,
16 within 30 days after the expiration of six months after the day on
17 which the claim for refund has been filed), the income tax return
18 preparer fails to begin a proceeding in the superior court for the
19 determination of his or her liability for that penalty, paragraph (1)
20 shall cease to apply with respect to that penalty, effective on the
21 day following the close of the applicable 30-day period referred to
22 in this subdivision.

23 (3) The running of the period of limitations provided in Section
24 19371 on the collection by levy or by a proceeding in court in
25 respect of any penalty described in paragraph (1) shall be
26 suspended for the period during which the Franchise Tax Board is
27 prohibited from collecting by levy or a proceeding in court.

28 SEC. 4. Section 19173 of the Revenue and Taxation Code is
29 amended to read:

30 19173. (a) A person is liable for a penalty, as determined
31 under subdivision (b), unless it is shown that subdivision (d)
32 applies, if that person is required to file a return under Section
33 18648, Section 19775, or maintain a list under Section 19776, and
34 for any calendar year does any of the following:

35 (1) Fails to file a return within 60 days of a request, or in the
36 case of a return required to be filed under Section 19775, fails to
37 file the return on or before the date prescribed therefor, or in the
38 case of a list required to be maintained under Section 19776, fails
39 to make that list available upon written request therefor by the
40 Franchise Tax Board.



1 (2) Files a return which fails to show the information required
2 under Section 18648, Section 19775, or in the case of a list
3 required to be maintained under Section 19776, fails to show the
4 information required under Section 19776.

5 (3) Files false or incomplete information with respect to a
6 reportable transaction required to be filed under Section 19775.

7 (4) Fails to furnish the required statement to each investor.

8 (b) (1) For purposes of subdivision (a), the amount determined
9 under this subdivision is the product of one thousand dollars
10 (\$1,000), multiplied by the number of investors required to be
11 shown on the return required to be filed under Section 18648. If
12 the number of investors cannot be determined by the Franchise Tax
13 Board, the amount determined under this subdivision shall be one
14 hundred thousand dollars (\$100,000).

15 (2) (A) For purposes of subdivision (a), the amount
16 determined under this subdivision for a return required to be filed
17 under Section 19775 shall, except as provided in subparagraph
18 (B), be fifteen thousand dollars (\$15,000).

19 (B) If the penalty is with respect to a listed transaction (as
20 defined in paragraph (2) of subdivision (c) of Section 19772), the
21 amount determined under this subdivision for a return required to
22 be filed under Section 19775 shall be the greater of:

23 (i) Two hundred thousand dollars (\$200,000), or

24 (ii) Fifty percent of the gross income of that material advisor
25 derived from that advice.

26 (C) In the case of intentional disregard by a material advisor of
27 the requirement to disclose a listed transaction (as defined in
28 paragraph (2) of subdivision (c) of Section 19772), the percentage
29 of gross income under clause (ii) of subparagraph (B) shall be “75
30 percent” instead of “50 percent.”

31 (3) For purposes of subdivision (a), the amount determined
32 under this subdivision for the failure to provide a list required to
33 be maintained under Section 19776 at the written request of the
34 Franchise Tax Board shall be ten thousand dollars (\$10,000) for
35 each day after the 20th day that the material advisor has failed to
36 make the list available to the Franchise Tax Board after written
37 request for that list was made by the Franchise Tax Board.

38 (c) The penalty imposed by subdivision (a) shall be assessed
39 against that person required to file a return under Section 18648,
40 Section 19775, or maintain a list under Section 19776.

(d) (1) The Chief Counsel of the Franchise Tax Board may rescind all or any portion of any penalty imposed by subdivision (a) with respect to any violation with respect to a return required to be filed under Section 18648, Section 19775, or a list required to be maintained under Section 19776 if all of the following apply:

(A) The violation is with respect to a reportable transaction (as defined in paragraph (1) of subdivision (c) of Section 19772) other than a listed transaction (as defined in paragraph (2) of subdivision (c) of Section 19772).

(B) The person on whom the penalty is imposed has a history of complying with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(C) It is shown that the violation is due to an unintentional mistake of fact.

(D) Imposing the penalty would be against equity and good conscience.

(E) Rescinding the penalty would promote compliance with the requirements of this part and Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and effective tax administration.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision is final.

(e) Article 3 (commencing with Section 19031) of this chapter (relating to deficiency assessments) does not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(f) The penalty imposed by this section is in addition to any penalty imposed under the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the Corporation Tax Law (Part 11 (commencing with Section 23001)), or this part.

SEC. 5. Section 19177 of the Revenue and Taxation Code is amended to read:

19177. (a) A penalty shall be imposed for promoting abusive tax shelters. The penalty shall be determined in accordance with the provisions of Section 6700 of the Internal Revenue Code, except as otherwise provided.

(b) Notwithstanding Section 6700(a) of the Internal Revenue Code, if an activity with respect to which a penalty imposed under Section 6700(a) of the Internal Revenue Code involves a statement described in Section 6700(a)(2)(A) of the Internal Revenue Code, the amount of the penalty imposed under subdivision (a) is equal to 50 percent of the gross income derived (or to be derived) from that activity by the person on which the penalty is imposed.

SEC. 6. Section 19179 of the Revenue and Taxation Code is amended to read:

19179. A penalty is imposed for filing a frivolous return. The penalty shall be determined in accordance with Section 6702 of the Internal Revenue Code, except as otherwise provided.

(a) *For taxpayers that have been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter (within the meaning of Section 19777),* Section 6702 of the Internal Revenue Code applies to returns required to be filed under this part.

(b) Section 6702(a) of the Internal Revenue Code is modified as follows:

(1) By substituting “\$5,000” in lieu of “\$500.”

(2) By substituting the word “person” in lieu of the phrase “individual” in each place that it appears.

(3) By substituting “tax imposed under the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the Corporation Tax Law (Part 11 (commencing with Section 23001)), or this part” in lieu of the phrase “tax imposed by subtitle A.”

(4) By substituting the phrase “is based on” in lieu of the phrase “is due to.”

(5) By substituting the phrase “frivolous or is based on a position that the Franchise Tax Board has identified as frivolous under subdivision (c) of Section 19179” in lieu of the word “frivolous.”

(6) By substituting the phrase “reflects a desire to delay or impede the administration of federal income tax laws as determined by the Secretary of the Treasury or the administration of the tax imposed under the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the Corporation Tax Law (Part 11 (commencing with Section 23001)), or this part as determined by the Franchise Tax Board” in lieu of the phrase “a

1 desire (which appears on the purported return) to delay or impede
2 the administration of Federal income tax laws.”

3 (c) (1) The Franchise Tax Board shall prescribe, and
4 periodically revise, a list of positions which the Secretary of the
5 Treasury for federal income tax purposes or the Franchise Tax
6 Board has identified as being frivolous for purposes of this section.

7 (2) Chapter 3.5 (commencing with Section 11340) of Part 1 of
8 Division 3 of Title 2 of the Government Code does not apply to any
9 standard, criterion, procedure, determination, rule, notice, or
10 guideline established or prescribed by the Franchise Tax Board
11 pursuant to paragraph (1).

12 (d) (1) Except as provided in paragraph (3), any person who
13 submits a specified frivolous submission shall pay a penalty of five
14 thousand dollars (\$5,000).

15 (2) For purposes of this section, all of the following apply:

16 (A) The term “specified frivolous submission” means a
17 specified submission if any portion of that submission meets any
18 of the following conditions:

19 (i) Is based on a position that the Franchise Tax Board has
20 identified as frivolous under subdivision (c).

21 (ii) Reflects a desire to delay or impede the administration of
22 federal income tax laws as determined by the Secretary of the
23 Treasury or the administration of the tax imposed under the
24 Personal Income Tax Law (Part 10 (commencing with Section
25 17001)), the Corporation Tax Law (Part 11 (commencing with
26 Section 23001)), or this part as determined by the Franchise Tax
27 Board.

28 (B) The term “specified submission” means any of the
29 following:

30 (i) A protest under Section 19041.

31 (ii) A request for a hearing under Section 19044.

32 (iii) An application under any of the following sections:

33 (I) Section 19008, relating to agreements for payment of tax
34 liability in installments.

35 (II) Section 19443, relating to compromises.

36 (III) Section 21004, relating to actions of the Taxpayer Right’s
37 Advocate.

38 (3) If the Franchise Tax Board provides a person with notice
39 that a submission is a specified frivolous submission and the
40 person withdraws that submission within 30 days after the notice,

1 the penalty imposed under paragraph (1) does not apply with
2 respect to that submission.

3 (e) (1) The Chief Counsel of the Franchise Tax Board may
4 rescind all or any portion of any penalty imposed by this section
5 if both of the following apply:

6 (A) Imposing the penalty would be against equity and good
7 conscience.

8 (B) Rescinding the penalty would promote compliance with
9 the requirements of this part and Part 10 (commencing with
10 Section 17001) or Part 11 (commencing with Section 23001) and
11 effective tax administration.

12 (2) The exercise of authority under paragraph (1) shall be at the
13 sole discretion of the Chief Counsel of the Franchise Tax Board
14 and may not be delegated.

15 (3) Notwithstanding any other law or rule of law, any
16 determination under this subdivision is final.

17 (f) The penalties imposed by this section are in addition to any
18 other penalty provided by law.

19 SEC. 7. Section 19715 of the Revenue and Taxation Code is
20 amended to read:

21 19715. (a) A civil action in the name of the State of California
22 to enjoin any person from further engaging in specified conduct
23 may be commenced at the request of the Franchise Tax Board. Any
24 action under this section shall be brought in accordance with
25 Section 19707. The court may exercise its jurisdiction over that
26 action separate and apart from any other action brought by the
27 State of California against that person.

28 (b) In any action under subdivision (a), the court may enjoin the
29 person from engaging in the specified conduct or in any other
30 activity subject to penalty under this part, if the court finds both of
31 the following:

32 (1) That the person has engaged in any specified conduct.

33 (2) That injunctive relief is appropriate to prevent recurrence
34 of that specified conduct.

35 (c) For purposes of this section, the term “specified conduct”
36 means any action, or failure to take action, subject to penalty under
37 Sections 19173, 19174, 19177, or 19178.

38 SEC. 8. Chapter 9.5 (commencing with Section 19770) is
39 added to Part 10.2 of the Revenue and Taxation Code, to read:

40

CHAPTER 9.5. TAX SHELTERS

19770. (a) (1) Notwithstanding Section 19057, with respect to proposed deficiency assessments related to an abusive tax avoidance transaction, a notice of a proposed deficiency assessment may be mailed to the taxpayer within eight years after the return was filed, or within the period otherwise provided in Article 3 (commencing with Section 19031) of Chapter 4 of this part, whichever expires later.

(2) For purposes of this section, an “abusive tax avoidance transaction” means a plan or arrangement devised for the principal purpose of avoiding tax. Abusive tax avoidance transactions include, but are not limited to, “listed transactions” as described in Section 19772.

(b) This section applies to any return filed under this part on or after January 1, 2000.

19771. (a) In applying the economic substance doctrine under the Personal Income Tax Law (Part 10 (commencing with Section 17001)), the Corporation Tax Law (Part 11 (commencing with Section 23001)), and this part, the determination of whether a transaction has economic substance shall be made as provided in this section.

(b) For purposes of subdivision (a):

(1) A transaction has economic substance only if all of the following apply:

(A) The transaction changes in a meaningful way (apart from California state income tax effects and, if there is any California state income tax effects, also apart from any federal, foreign, other state, or local tax effects) the taxpayer’s economic position.

(B) The taxpayer has a substantial nontax purpose for entering into that transaction and the transaction is a reasonable means of accomplishing that purpose.

(2) A transaction may not be treated as having economic substance by reason of having a potential for profit, unless both of the following apply:

(A) The present value of the reasonably expected pretax profit from the transaction is substantial in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected.

1 (B) The reasonably expected pretax profit from the transaction
2 exceeds a risk-free rate of return.

3 (c) Fees and other transaction expenses and foreign taxes shall
4 be taken into account as expenses in determining pretax profit
5 under paragraph (2) of subdivision (b).

6 (d) (1) The form of a transaction which is in substance the
7 borrowing of money or the acquisition of financial capital directly
8 or indirectly from a tax-indifferent party may not be respected if
9 the present value of the deductions to be claimed with respect to
10 the transaction is substantially in excess of the present value of the
11 anticipated economic returns of the person lending the money or
12 providing the financial capital. A public offering shall be treated
13 as a borrowing, or an acquisition of financial capital, from a
14 tax-indifferent party if it is reasonably expected that at least 50
15 percent of the offering will be placed with tax-indifferent parties.

16 (2) The form of a transaction with a tax-indifferent party may
17 not be respected if either of the following apply:

18 (A) The form of the transaction results in an allocation of
19 income or gain to the tax-indifferent party in excess of such party's
20 economic income or gain.

21 (B) The form of the transaction results in a basis adjustment or
22 shifting of basis on account of overstating the income or gain of
23 the tax-indifferent party.

24 (e) For purposes of this subsection:

25 (1) The term "economic substance doctrine" means the
26 common law doctrine under which tax benefits under the Personal
27 Income Tax Law (Part 10 (commencing with Section 17001)) or
28 the Corporation Tax Law (Part 11 (commencing with Section
29 23001)) with respect to a transaction are not allowable if the
30 transaction does not have economic substance or lacks a business
31 purpose.

32 (2) The term "tax-indifferent party" means any person or
33 entity not subject to tax imposed by Part 10 (commencing with
34 Section 17001) or Part 11 (commencing with Section 23001)
35 including an entity not subject to tax imposed under Part 11
36 pursuant to a water's-edge election under Article 1.5
37 (commencing with 25110) of Chapter 17 of Part 11. A person is
38 treated as a tax-indifferent party with respect to a transaction if the
39 items taken into account with respect to the transaction have no
40 substantial impact on that person's liability under Part 10

1 (commencing with Section 17001) or Part 11 (commencing with
2 Section 23001).

3 (3) In applying subparagraph (A) of paragraph (2) of
4 subdivision (b) to the lessor of tangible property subject to a lease,
5 the expected net tax benefits may not include the benefits of
6 depreciation, or any tax credit, with respect to the leased property
7 and subparagraph (B) of paragraph (2) of subdivision (b) shall be
8 disregarded in determining whether any of those benefits are
9 allowable.

10 (f) Except as specifically provided in this section, the
11 provisions of this section may not be construed as altering or
12 supplanting any other rule of law, and the requirements of this
13 section shall be construed as being in addition to any other rule of
14 law.

15 (g) (1) The Franchise Tax Board may prescribe those
16 regulations as may be necessary or appropriate to carry out the
17 purposes of this section. The regulations may include exemptions
18 from the application of this section.

19 (2) Any regulations promulgated by the Secretary of the
20 Treasury related to economic substance shall be applicable for
21 purposes of this section to the extent they do not conflict with this
22 part or with regulations issued by the Franchise Tax Board.

23 (h) This section applies to determinations on or after the
24 effective date of this act with respect to transactions entered into
25 on or after January 1, 1999.

26 19772. (a) Any ~~person~~ *large entity or high net worth*
27 *individual* who fails to include on any return or statement any
28 information with respect to a reportable transaction that is required
29 under Section 6011 of the Internal Revenue Code, as modified by
30 Section 18407, to be included with that return or statement shall
31 pay a penalty *for each omission* in the amount determined under
32 subdivision (b).

33 (b) (1) Except as provided in ~~paragraphs (2) and (3)~~
34 *paragraph (2)*, the amount of the penalty under subdivision (a) is
35 fifteen thousand dollars (\$15,000).

36 (2) The amount of the penalty under subdivision (a) with
37 respect to a listed transaction is thirty thousand dollars (\$30,000).

38 ~~(3) (A) In the case of a failure under subdivision (a) by a large~~
39 ~~entity, or by a high net worth individual, the penalty under~~

paragraph (1) or (2) shall be twice the amount determined without regard to this paragraph.

(B) For purposes of subparagraph (A), the term “large entity” means, with respect to any taxable year, a person (other than an individual) with gross receipts in excess of ten million dollars (\$10,000,000) for the taxable year in which the reportable transaction occurs or the preceding taxable year. Rules similar to the rules of Sections 448(c)(2) and 448(c)(3) of the Internal Revenue Code, other than Section 448(c)(3)(A) of the Internal Revenue Code, apply for purposes of this subparagraph.

(C) The term “high net worth individual” means, with respect to a transaction, an individual whose net worth exceeds two million dollars (\$2,000,000) immediately before the transaction.

(c) For purposes of this section:

(1) —

(c) For purposes of this section:

(1) The term “high net worth individual” means, with respect to a transaction, an individual whose net worth exceeds two million dollars (\$2,000,000) immediately before the transaction.

(2) The term “large entity” means, with respect to any taxable year, a person (other than an individual) with gross receipts in excess of ten million dollars (\$10,000,000) for either the taxable year in which the reportable transaction occurs or in the preceding taxable year. Rules similar to the rules of Section 448(c)(2) and Section 448(c)(3) of the Internal Revenue Code, other than Section 448(c)(3)(A) of the Internal Revenue Code, apply for purposes of this paragraph.

(3) The term “reportable transaction” means any transaction with respect to which information is required to be included with a return or statement because, as determined under regulations prescribed by the Secretary of the Treasury under Section 6011 of the Internal Revenue Code for federal income tax purposes or by the Franchise Tax Board under Section 18407, that transaction is of a type that the Secretary of the Treasury for federal income tax purposes or the Franchise Tax Board determines as having a potential for tax avoidance or evasion.

(2) —

(4) Except as provided in regulations prescribed by the Secretary of the Treasury or by the Franchise Tax Board, the term “listed transaction” means a reportable transaction (as defined in

1 paragraph ~~(1)~~ (3)) that is the same as, or substantially similar to,
2 a transaction specifically identified by the Secretary of the
3 Treasury for purposes of Section 6011 of the Internal Revenue
4 Code for federal income tax purposes or by the Franchise Tax
5 Board for purposes of Section 6011 of the Internal Revenue Code
6 or Section 18407, as a tax avoidance transaction.

7 (d) (1) The Chief Counsel of the Franchise Tax Board may
8 rescind all or any portion of any penalty imposed by this section
9 with respect to any violation if all of the following apply:

10 (A) The violation is with respect to a reportable transaction
11 other than a listed transaction.

12 (B) The person on whom the penalty is imposed has a history
13 of complying with the requirements of this part and Part 10
14 (commencing with Section 17001) or Part 11 (commencing with
15 Section 23001).

16 (C) It is shown that the violation is due to an unintentional
17 mistake of fact.

18 (D) Imposing the penalty would be against equity and good
19 conscience.

20 (E) Rescinding the penalty would promote compliance with the
21 requirements of this part and Part 10 (commencing with Section
22 17001) or Part 11 (commencing with Section 23001) and effective
23 tax administration.

24 (2) The exercise of authority under paragraph (1) shall be at the
25 sole discretion of the Chief Counsel of the Franchise Tax Board
26 and may not be delegated.

27 (3) Notwithstanding any other law or rule of law, any
28 determination under this subdivision is final.

29 (e) Article 3 (commencing with Section 19031) of Chapter 4
30 (relating to deficiency assessments) does not apply with respect to
31 the assessment or collection of any penalty imposed under this
32 section.

33 (f) The penalty imposed by this section is in addition to any
34 penalty imposed under Part 10 (commencing with Section 17001),
35 Part 11 (commencing with Section 23001), or this part.

36 19773. (a) If a taxpayer has a reportable transaction
37 understatement for any taxable year, there shall be added to the tax
38 an amount equal to 20 percent of the amount of that
39 understatement.

40 (b) For purposes of this section, both of the following apply:

(1) The term “reportable transaction understatement” means the sum of subparagraphs (A) and (B).

(A) The product of:

(i) The amount of the increase (if any) in taxable income which results from a difference between the proper tax treatment of an item to which this section applies and the taxpayer’s treatment of that item (as shown on the taxpayer’s return of tax).

(ii) The highest rate of tax imposed on the taxpayer under Part 10 (commencing with Section 17001) in the case of a taxpayer subject to tax under that part or under Part 11 (commencing with Section 23001) in the case of a taxpayer that is subject to tax under that part.

(B) The amount of the decrease (if any) in the aggregate amount of credits determined under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001), as applicable, that results from a difference between the taxpayer’s treatment of an item to which this section applies, as shown on the taxpayer’s return of tax, and the proper tax treatment of that item.

(C) For purposes of subparagraph (A), any reduction of the excess of deductions allowed for the taxable year over gross income for that year, and any reduction in the amount of capital losses which would, without regard to Section 1211 of the Internal Revenue Code, be allowed for that year, shall be treated as an increase in taxable income.

(2) This section applies to any item that is attributable to either of the following:

(A) Any listed transaction.

(B) Any reportable transaction, other than a listed transaction, if a significant purpose of that transaction is the avoidance or evasion of tax imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(c) (1) Subdivision (a) shall be applied by substituting “30 percent” for “20 percent” with respect to the portion of any reportable transaction understatement with respect to which the requirement of Section 6664 of the Internal Revenue Code, as modified by subparagraph (A) of paragraph (2) of subdivision (d) of Section 19164, is not met.

(2) (A) If the notice of proposed assessment of additional tax has been sent with respect to a penalty to which this section applies,

1 only the Chief Counsel of the Franchise Tax Board may
2 compromise all or any portion of that penalty.

3 (B) The exercise of authority under subparagraph (A) shall be
4 at the sole discretion of the Chief Counsel of the Franchise Tax
5 Board and may not be delegated.

6 (C) Notwithstanding any other law or rule of law, any
7 determination under this subdivision may not be reviewed in any
8 administrative or judicial proceeding.

9 (d) For purposes of this section, the terms “reportable
10 transaction” and “listed transaction” have the respective
11 meanings given to those terms by subdivision (c) of Section
12 19772.

13 (e) (1) In the case of an understatement (as defined in Section
14 6662(d)(2) of the Internal Revenue Code) all of the following
15 apply:

16 (A) The amount of the understatement, determined without
17 regard to this paragraph, shall be increased by the aggregate
18 amount of reportable transaction understatements and
19 noneconomic substance transaction understatements for purposes
20 of determining whether the understatement is a substantial
21 understatement under Section 6662(d)(1) of the Internal Revenue
22 Code.

23 (B) The addition to tax under subdivision (a) of Section 19164
24 applies only to the excess of the amount of the substantial
25 understatement, if any, after the application of subparagraph (A)
26 over the aggregate amount of reportable transaction
27 understatements and noneconomic substance transaction
28 understatements.

29 (2) (A) In determining the fraud penalty imposed under
30 subdivision (c) of Section 19164, references to an underpayment
31 in Section 6663 of the Internal Revenue Code are treated as
32 including references to a reportable transaction understatement
33 and a noneconomic substance transaction understatement.

34 (B) This section does not apply to any portion of an
35 understatement on which a penalty is imposed under Section
36 19774.

37 (3) Except as provided in regulations, in no event may any tax
38 treatment included with an amendment or supplement to a return
39 of tax be taken into account in determining the amount of any
40 reportable transaction understatement or noneconomic substance

1 transaction understatement, if the amendment or supplement is
2 filed after the earlier of the date the taxpayer is first contacted by
3 either the Secretary of the Treasury for federal income tax
4 purposes or the Franchise Tax Board regarding the examination of
5 the return or such other date as is specified by the Franchise Tax
6 Board.

7 (4) For purposes of this subdivision, the term “noneconomic
8 substance transaction understatement” has the meaning given that
9 term by subdivision (c) of Section 19774.

10 19774. (a) If a taxpayer has a noneconomic substance
11 transaction understatement for any taxable year, there shall be
12 added to the tax an amount equal to 40 percent of the amount of
13 that understatement.

14 (b) (1) Subdivision (a) shall be applied by substituting “20
15 percent” for “40 percent” with respect to the portion of any
16 noneconomic substance transaction understatement with respect
17 to which the relevant facts affecting the tax treatment of the item
18 are adequately disclosed in the return or a statement attached to the
19 return.

20 (2) For taxable years beginning before January 1, 2003,
21 “adequately disclosed” includes the disclosure of the tax shelter
22 identification number on the taxpayer’s return as required by
23 subdivision (c) of Section 18628.

24 (c) (1) The term “noneconomic substance transaction
25 understatement” means any amount which would be an
26 understatement under paragraph (1) of subdivision (b) of Section
27 19773 if Section 19773 were applied by taking into account items
28 attributable to noneconomic substance transactions rather than
29 items to which Section 19773 applies.

30 (2) The term “noneconomic substance transaction” means any
31 transaction if either of the following conditions are satisfied:

32 (A) There is a lack of economic substance (within the meaning
33 of Section 19771) for the transaction giving rise to the claimed
34 benefit or the transaction was not respected under Section 19771.

35 (B) The transaction fails to meet the requirements of any
36 similar rule of law.

37 (d) (1) If the notice of proposed assessment of additional tax
38 has been sent with respect to a penalty to which this section applies,
39 only the Chief Counsel of the Franchise Tax Board may
40 compromise all or any portion of that penalty.

(2) The exercise of authority under paragraph (1) shall be at the sole discretion of the Chief Counsel of the Franchise Tax Board and may not be delegated.

(3) Notwithstanding any other law or rule of law, any determination under this subdivision is final.

19775. In addition to the requirements of Section 18628, all of the following requirements apply:

(a) (1) Each material advisor with respect to any reportable transaction shall make a return, in the form the Franchise Tax Board may by forms and instructions prescribe, setting forth all of the following:

(A) Information identifying and describing the transaction.

(B) Information describing any potential tax benefits expected to result from the transaction.

(C) Any other information as the Franchise Tax Board may by forms and instructions prescribe.

(2) The return required under paragraph (1) shall be filed not later than the date specified by the Franchise Tax Board. *later than 45 days after the person becomes a material advisor.*

(b) For purposes of this section:

(1) (A) The term “material advisor” means any person that satisfies both of the following requirements:

(i) Provides any material aid, assistance, or advice with respect to organizing, promoting, selling, implementing, or carrying out any reportable transaction.

(ii) Directly or indirectly derives gross income in excess of the threshold amount for that aid, assistance, or advice.

(B) For purposes of subparagraph (A), the threshold amount is fifty thousand dollars (\$50,000) in the case of a reportable transaction, from which substantially all of the tax benefits are provided to individuals, and two hundred fifty thousand dollars (\$250,000) in any other case.

(2) The term “reportable transaction” has the meaning given to that term by paragraph (1) of subdivision (c) of Section 19772.

(c) The Franchise Tax Board may by forms and instructions prescribe all of the following:

(1) That only one person shall be required to meet the requirements of subdivision (a) in cases in which two or more persons would otherwise be required to meet those requirements.

(2) Exemptions from the requirements of this section.

(3) Those rules as may be necessary or appropriate to carry out the purposes of this section.

19776. (a) Each material advisor, as defined in Section 19775, with respect to any reportable transaction, as defined in paragraph (1) of subdivision (c) of Section 19772, shall maintain, in the form and manner as the Franchise Tax Board may by forms and instructions prescribe, a list that provides all of the following information:

(1) Identification of each person with respect to whom the material advisor acted as a material advisor with respect to a reportable transaction, as defined in paragraph (1) of subdivision (c) of Section 19772. That identification shall include for each person listed, the full name, address, and taxpayer identification number of that person.

(2) Any other information the Franchise Tax Board may require.

(b) Every person required to maintain a list under subdivision (a) shall make that list available to the Franchise Tax Board within 20 days of a written request for that list made by the Franchise Tax Board. Every person required to maintain a list under subdivision (a) shall furnish, within 20 days of the date the list is furnished to the Franchise Tax Board under the preceding sentence, to each person with respect to whom the material advisor acted as a material advisor with respect to a reportable transaction, as defined in paragraph (1) of subdivision (c) of Section 19772, and that is shown on that list, a written statement showing the name, address, and telephone number of the person furnishing the list to the Franchise Tax Board as well as a description of the information provided.

(c) This section applies without regard to whether a material advisor is required to file a return under Section 19775 with respect to a reportable transaction, as defined in paragraph (1) of subdivision (c) of Section 19772.

19777. (a) If a taxpayer has been contacted by the Franchise Tax Board regarding the use of a potentially abusive tax shelter and has ~~an underpayment of tax~~ *a deficiency*, there shall be added to the tax an amount equal to 100 percent of the interest ~~accrued~~ *payable* under Section 19101 for the period beginning on the last date prescribed by law for the payment of that tax, determined

1 without regard to extensions, and ending on the date the notice of
2 proposed assessment is mailed.

3 (b) “Potentially abusive tax shelter” means:

4 (1) Any tax shelter, as defined in Section 6111 of the Internal
5 Revenue Code, with respect to which registration is required under
6 Section 6111 of the Internal Revenue Code.

7 (2) Any entity, investment plan or arrangement, or other plan
8 or arrangement which is of a type that the Secretary or the
9 Franchise Tax Board determines by regulations as having a
10 potential for tax avoidance or evasion.

11 (c) The penalty imposed by this section is in addition to any
12 other penalty imposed under Part 10 (commencing with Section
13 17001), Part 11 (commencing with Section 23000), or this part.

14 (d) This section applies to notices of proposed assessments
15 mailed after the effective date of the act adding this section.

16 19778. For any amended return filed after March 31, 2004,
17 and before the taxpayer is contacted by the Internal Revenue
18 Service or the Franchise Tax Board regarding a potentially abusive
19 tax shelter, then, for taxable years beginning after December 31,
20 1998, with respect to any understatement of tax related to using
21 reportable transactions as defined in Section 18407, as added by
22 the act adding this section, the taxpayer is subject to interest as
23 provided under Section 19101 but at a rate of 150 percent of the
24 adjusted annual rate established under Section 19521.

25 SEC. 9. Section 21028 of the Revenue and Taxation Code is
26 amended to read:

27 21028. (a) (1) With respect to tax advice, the protections of
28 confidentiality that apply to a communication between a client and
29 an attorney, as set forth in Article 3 (commencing with Section
30 950) of Chapter 4 of Division 8 of the Evidence Code, shall also
31 apply to a communication between a taxpayer and any federally
32 authorized tax practitioner to the extent the communication would
33 be considered a privileged communication if it were between a
34 client and an attorney.

35 (2) Paragraph (1) may only be asserted in any noncriminal tax
36 matter before the Franchise Tax Board.

37 (3) For purposes of this section:

38 (A) “Federally authorized tax practitioner” means any
39 individual who is authorized under federal law to practice before
40 the Internal Revenue Service if the practice is subject to federal

1 regulation under Section 330 of Title 31 of the United States Code,
2 as provided by federal law as of January 1, 2000.

3 (B) “Tax advice” means advice given by an individual with
4 respect to a state tax matter, which may include federal tax advice
5 if it relates to the state tax matter. For purposes of this
6 subparagraph, “federal tax advice” means advice given by an
7 individual within the scope of his or her authority to practice
8 before the federal Internal Revenue Service on noncriminal tax
9 matters.

10 (C) “Tax shelter” means a partnership or other entity, any
11 investment plan or arrangement, or any other plan or arrangement
12 if a significant purpose of that partnership, entity, plan, or
13 arrangement is the avoidance or evasion of federal income tax or
14 the avoidance or evasion of the tax imposed under the Personal
15 Income Tax Law (Part 10 (commencing with Section 17001)) or
16 the Corporation Tax Law (Part 11 (commencing with Section
17 23001)).

18 (b) The privilege under subdivision (a) does not apply to any
19 written communication between a federally authorized tax
20 practitioner and any person, or any director, officer, employee,
21 agent, or representative of a person, or any other person holding
22 a capital or profits interest in the person in connection with the
23 promotion of the direct or indirect participation of the person in
24 any tax shelter, as defined in Section 1274(b)(3)(B) of the Internal
25 Revenue Code, as modified by subdivision (g) of Section 19164,
26 in connection with the promotion of the direct or indirect
27 participation of the corporation in any tax shelter, or in any
28 proceeding to revoke or otherwise discipline any license or right
29 to practice by any governmental agency.

30 (c) This section shall be operative for communications made on
31 or after the effective date of the act adding this section.

32 (d) This section shall remain in effect only until January 1,
33 2005, and as of that date is repealed, unless a later enacted statute,
34 that is enacted before January 1, 2005, deletes or extends that date.

35 (e) The amendments to this section by the act adding this
36 subdivision shall apply to communications made on or after the
37 effective date of the act adding this subdivision.

38 SEC. 10. (a) This act shall apply with respect to any penalty
39 assessed on or after January 1, 2004, on any return on which the
40 statute of limitations on assessment has not expired, unless



1 provided otherwise. All other provisions of this act shall apply on
2 January 1, 2004.

3 (b) Except as provided in subdivision (c), Sections 18407,
4 19772, and 19773 of the Revenue and Taxation Code, as amended
5 or added by this act, apply to taxable years beginning on or after
6 January 1, 2003.

7 (c) (1) Sections 19775 and 19776 of the Revenue and Taxation
8 Code, as added by this act, apply beginning on January 1, 1999.

9 (2) For persons to which Sections 19775 or 19776 apply,
10 Sections 18407 and 19772 of the Revenue and Taxation Code, as
11 amended or added by this act, apply beginning on January 1, 1999.

12 (3) For purposes of applying Section 19778 of the Revenue and
13 Taxation Code, Section 18407 of the Revenue and Taxation Code,
14 as added by this act, applies for taxable years beginning after
15 December 31, 1998.

16 (4) For the period January 1, 1999, through December 31,
17 2003, the return required under Section 19775 or the list required
18 under Section 19776 of the Revenue and Taxation Code, as added
19 by this act, may not be due or requested prior to April 30, 2004.

20 *SEC. 11. (a) The Franchise Tax Board shall report annually*
21 *to the Legislature regarding the steps taken during the prior*
22 *calendar year to implement the provisions of this act. This report*
23 *shall include, but not be limited to, all of the following:*

24 *(1) The number of taxpayers, tax shelter promoters, tax shelter*
25 *organizers, and material advisors that have been sanctioned by the*
26 *Franchise Tax Board for tax shelter activities.*

27 *(2) The fiscal impact of the penalties assessed.*

28 *(3) The administrative costs incurred by the Franchise Tax*
29 *Board to administer the provisions of this act.*

30 *(b) The Legislative Analyst's office shall report to the*
31 *Legislature within two years of the effective date of this act*
32 *regarding the impact of the act on tax shelters, state tax*
33 *collections, and the state's business climate.*